IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7340 OF 2005

Pushpa Chandrakant Pednekar ...Petitioner
vs.
Sadanand Tukaram Keni and Ors. ....Respondents

S.A. Sawant and H.V. kode for petitioner.

A.S.Khandeparkar and B.G. Jangsale for respondent no.1.

CORAM: S.U. KAMDAR, J.

DATE : 17th November, 2005.

P.C. :

1. The present writ petition is preferred against the order passed by the Additional District Judge, Sindhudurg in Misc. Appl. No.39 of 2005 dated 23.9.2005.

2. The plaintiff in the present proceedings is claiming the rights inrespect of the suit land alongwith house situated thereon as and by way of adverse possession. In the said proceedings the

plaintiff had taken out an application for injunction restraining the defendants, who are the original owners inrespect of the suit property, from carrying on construction on the suit land. The interim application was heard by the Civil Judge, Senior Division, Malwan and he gave a finding that the plaintiff has failed to prove a prima-facie case of possession inrespect of the said property. However while rejecting the application for interim relief he further passed an order that both the parties are directed to maintain status-quo regarding the suit properties till the disposal of the suit. Being aggrieved by the said order the respondent preferred an appeal before the Additional District Judge and has taken out an application for stay of the said order. The appeal court had by an order dated 10/09/2004 stayed the order of status-quo passed by the trial court. The plaintiff herein thereafter challenged the said order by filing a Writ petition being No. 9881 of 2005. By an order dated 13.4.2005 the learned single judge of this court directed the parties

to maintain status-quo till the application for condonation of delay in filing appeal and appeal itself is finally heard by the Additional District judge. Thereafter the Additional District Judge has taken up the appeal for final hearing and by an order and judgment dated 23.9.2005 granted the order in favour of the petitioner only in so far the municipal house no. 2202 and 2201 are concerned. Whereas in so far as the balance of the land is concerned the application for interim relief has been rejected. It is this order of the Additional District Judge dated 23.9.2005 is subject matter of challenge in the present writ petition.

5. Learned counsel for the petitioner has contended that the learned District Judge ought to have continued the order of status-quo which was passed by the Civil Judge, Junior Division, Malwan in an interim application. In so far as this argument is concerned I am of the opinion that the order of the Civil Judge was totally unsustainable because having come to the finding

that the plaintiffs have failed to prove prima-facie it was not open for the Civil Judge, Junior Division to grant any interim relief at all. Learned counsel for the petitioner however further contended that in view of the status-quo order passed by this court in Writ Petition no. 9981 of 2005 this order of status-quo should be continued till disposal of the suit. I am not inclined to accept the aforesaid contention. because the order dated 13.4.2005 was limited up to the hearing of the appeal by the Additional District Judge. The Additional District Judge, Sindhudurg has thereafter heard the appeal and has given a finding that the petitioner has failed to establish that he is in possession of the entire property so as to claim any right as and by way of adverse possession. The documents produced by the petitioner before the Additional District Judge was only indicative of petitioners possession inrespect of House No. 2202 and 2201 which was established by Municipal Assessment Extract and thus the possession of the petitioners in so far as the said two houses are

concerned has been protected by the impugned orders. Howver the petitioner has failed to produce any evidence even as a prima-facie case to show that the petitioner was ever in possession of the balance land. Even at the hearing of the petition the petitioner is unable to show any documentary evidence to show that even prima-facie they were in possession of any portion of the balance land. In my opinion for claim of adverse possession the petitioner is required to show not only the continuous possession of last 12 years but is also required to show that the said possession was hostile to the claim of the respondent herein who are owners o the said property. The petitioners having failed to show even possession inrespect of the balance land, in my opinion the learned District Judge, Sindhudurg was right in refusing to grant any interim reliefs inrespect of land in which the plaintiff has not established his possession even prima-facie. The learned judge while passing the impugned order has taken care of the interest of the petitioners by protecting her

possession of house no. 2202 and 2201 which was in her possession. In that view of the matter I am of the opinion that the impugned order dated 23.9.2005 passed by the Additional District Judge, Sindhudurg does not require to be interfered with in a writ jurisdiction under Article 227 of the Constitution of India. In that view of the matter present writ petition fails and is accordingly dismissed.

3. It is made clear that the observation in the present order are prima-facie and would not influence the trial of the suit as the observations are only tentative.

sd/-

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